1 2 3 4 5 6 7	JESSE LASLOVICH United States Attorney MADISON L. MATTIOLI MT Bar No. 36411284 ABBIE J.N. CZIOK MT Bar No. 55781377 Assistant U.S. Attorneys U.S. Attorney's Office 901 Front Street, Suite 1100 Helena, MT 59626 Phone: (406) 457-5269 – Madison (406) 457-5268 – Abbie Fax: (406) 457-5130 Email: madison.mattioli@usdoj.gov	MARK STEGER SMITH MT Bar No. 4160 TIMOTHY A. TATARKA CA Bar No. 277219 Assistant U.S. Attorneys U.S. Attorney's Office James F. Battin Federal Courthouse 2601 2nd Ave. North, Suite 3200 Billings, MT 59101 Phone: (406) 247-4667 – Mark (406) 247-4642 – Tim Fax: (406) 657-6058	
8	abbie.cziok@usdoj.gov	Email: mark.smith3@usdoj.gov timothy.tatarka@usdoj.gov	
9	Attorneys for Federal Defendants and Defendant United States of America.		
11			
12		ATES DISTRICT COURT ALIFORNIA, OAKLAND DIVISION	
13	CALIFORNIA COALITION FOR WOMEN		
14	PRISONERS; et. al.,	CASE NO. 4:23-CV-04155-YGR	
15	Plaintiffs v.		
16	UNITED STATES OF AMERICA FEDERAL	UNITED STATES' RESPONSE TO	
17	BUREAU OF PRISONS; et. al.,	MOTION TO UNSEAL COURT RECORDS	
18	Defendants.		
19	Defendants respectfully respond to the Motion to Unseal Court Records (dkt. 317) as follows:		
20	The Appeal, Victoria Law, American Civil Liberties Union of Northern California, and the First		
21	Amendment Coalition argue that "the closure of FCI Dublin has rendered Defendants' safety and		
22	security concerns moot." (Dkt. 317 at 16–22.) For the most part, Defendants agree with this premise.		
23	(See dkt. 326.) In light of changing factual condit	ions that have mooted time-sensitive security concerns	
24	justifying the sealing of certain materials, Defen	dants agree to withdraw their request to keep certain	
25	documents and portions of documents redacted,	as detailed in the table below. But safety and security	
26	were not the only reasons provided in support of sealing certain documents and portions of documents.		
27	Defendants proposed, the Court has approved, limited redactions pursuant to both significant law		
28	enforcement safety and security concerns and t	he Privacy Act, which are undoubtedly independent	
	RESP. TO MOTION TO UNSEAL COURT RECORDS 4:23-cv-04155-YGR	1	

compelling reasons justifying nondisclosure of the remaining documents. 5 U.S.C. § 552a(b); see Kamakana v. City & Cty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) and Center for Auto Safety v. Chrysler Group LLC, 809 F.3d 1092, 1098 (9th Cir. 2016).

The Privacy Act prohibits an agency from "disclos[ing] any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." 5 U.S.C. § 552a(b). The United States does not have such written consent. Further, much of this information would not be subject to a Freedom of Information Act (FOIA) request and is not available to the public because it constitutes "records or information compiled for law enforcement purposes" that could "interfere with law enforcement proceedings" and "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. § 552a(b)(7). Intervenors' motion does not even mention the Privacy Act, let alone address this significant and compelling reason justifying limited nondisclosure of certain documents and excerpts.

As outlined in the table below and the initial motions to seal, Defendants maintain their request to keep documents redacted (i.e., sealed as to public disclosure), which continue to constitute private and/or confidential criminal investigative material and which implicate compelling law enforcement safety and security issues. See 5 U.S.C. § 552a(b)(7) and Shah v. Dep't of Justice, 89 F. Supp. 3d 1074, 1080 (D. Nev. 2015) (discussing law enforcement privilege and citing, inter alia, In re Sealed Case, 856 F.2d 268, 271 (D.C. Cir. 1988)). Because these security concerns are supported by sworn, specific, and cogent rationale proffered by high-ranking agency leadership, compelling reasons support Defendants' request that the documents should remain under seal. See Declaration of William Lothrop, dkt. 236-2 ("Lothrop's First Decl."); Art Dulgov's Declaration, dkts. 161-3 ("Dulgov Decl.").

Document and Portion of Document to be Sealed by U.S.	Evidence in Support of Sealing	Ruling	U.S.' Position on Unsealing
Dkt. 45, Motion to Seal Excerpts of Agostini's First Declaration ISO	Privacy Act, 5 U.S.C. §§ 552a(b); (b)(7) (protect privacy interest	Granted in Dkt. 222	Defendants do not object to unsealing Doc. 45, as the
Opposition to PI	and law enforcement sensitive information)		motion to seal itself should not have been filed under seal.
Documents and excerpts related to Dkt. 45	Privacy Act, 5 U.S.C. §§ 552a(b); (b)(7)	Granted in Dkt. 222	Defendants object to unsealing excerpts
	(protect privacy interest and law enforcement sensitive information)		related to Dkt. 45 as the reasons for sealing (privacy and
			confidential criminal investigative material) remain
			compelling despite facility closure.
Dkt. 75, Unopposed Motion to Seal	Privacy Act, 5 U.S.C. § 552a (private health	Granted in Dkt. 222	Defendants do not object to unsealing
	information		Dkt. 75, as the motion to seal itself should not have been filed under seal.
Documents and excerpts related to Dkt. 75	Privacy Act, 5 U.S.C. § 552a (private health	Granted in Dkt. 222	Defendants object to unsealing all
	information)		documents and excerpts related to Dkt. 75 as the
			reasons for sealing (privacy) remain
			compelling despite facility closure.
Dkt. 159, Admin. Mtn to Seal Response to Dkt.	Doc. 161-3 at ¶¶ 6, 8, 16	Granted in Dkt. 222	Defendants do not object to unsealing
143			Dkt. 159, as the motion to seal itself should not have been
			filed under seal.

1	Documents and excerpts	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	The United States
2	related to Dkt. 159	§ 552a; Doc. 161-3 at		objects to unsealing
		¶¶ 6, 8, 16		its Response to Dkt.
3				143 as the reasons
				for sealing remain
4				compelling (privacy
5				and institutional
				security) despite
6	Dkt. 162, Admin. Mtn to	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	facility closure. Defendants do not
7	Seal Private Health	§ 552a	Granted in Dkt. 222	object to unsealing
7	Information	3 3 3 2 u		the administrative
8	1111 01111411011			motion to seal, but
				objects to unsealing
9				related documents as
10				the reasons for
10				sealing (privacy)
11				remain valid despite
10			~ 5	facility closure.
12	Dkt. 168, Admin. Mtn to	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	Defendants do not
13	Seal Report to Court	§ 552a(b)		object to unsealing
				the motion to seal,
14				but objects to unsealing the related
15				documents as the
13				reasons for sealing
16				(privacy) remain
1.7				valid despite facility
17				closure.
18	Dkt. 176, Admin. Mtn to	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	Defendants do not
	Seal Documents Related	§ 552a; Doc. 161-3 at		object to unsealing
19	to Dkts. 172–176	¶¶ 6, 8, 16		the motion to seal,
20				but objects to
20				unsealing related documents, as the
21				reasons for sealing
22				(privacy and
22				institutional security)
23				remain compelling
				despite facility
24				closure.
25				
-5				

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1	Dkt. 184, Admin. Mtn to	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	The United States
2	File Excerpts Under Seal	§ 552a(b); Doc. 161-3 at		objects to unsealing
	Excerpts of Documents,	¶¶ 6, 8, 16		Dkt. 184 as the
3	and all excerpts of said			reasons for sealing
4	documents, containing PII and law enforcement			remain compelling despite facility
4	sensitive materials			closure.
5	Dkt. 197, Admin. Mtn to	Privacy Act, 5 U.S.C. §	Granted in Dkt. 222	The United States
6	Seal Declarations	552a(b), Doc. 161-3 at		objects to unsealing
	Related to PII and	$\P\P$ 6, 8, 16		all documents and
7	Institutional Security and			excerpts related to
8	related filings			Dkt. 197 as the reasons for sealing,
				(privacy and
9				institutional security)
10				remain compelling
				despite facility
11	Dkt. 199, Admin. Mtn to	Drive av. Act 5 II C.C.	Granted in Dkt. 222	closure. The United States
12	Seal Medical	Privacy Act, 5 U.S.C. § 552a(b)	Granieu III Dkt. 222	objects to unsealing
	Information in Response	3 3 2 4 (0)		all documents and
13	to Dkts. 190 and 195,			excerpts related to
14	and related filings			Dkt. 199 as the
				reasons for sealing
15				(privacy) remain compelling despite
16				facility closure.
1.7	Dkt. 206, Mtn. to Seal	Privacy Act, 5 U.S.C.	Granted in Dkt. 222	Defendants object to
17	Reese Second Decl. and	§ 552a(b)(7)		unsealing this
18	related filings, which			declaration as the
19	were provided at the direction of the Court			reasons for sealing (confidential
19	during the Feb. 27, 2024			criminal
20	Hearing, and contains			investigative material
21	confidential criminal			and privacy of a non-
41	investigative material			party) remain
22	and PII of a non-party.			compelling despite
23	Dkt. 229, Unopposed	Privacy Act, 5 U.S.C.	Granted in Dkt. 232	facility closure. Defendants do not
دے	Mtn. to Seal Documents	§ 552a	Granicu III DKt. 232	object to redacting
24	Related to Special	0 - 0 - 0		PII and filing a
25	Master Candidates			public version of
	(Exhibits 1 through 5)			Dkt. 229-2.
26				

1	Dkt. 236, Admin. Mtn	Lothrop's First Decl.,	Pending	Defendants object to
$_{2}\parallel$	for in camera review and	institutional security.		unsealing Dkt. 236-
	to Seal Notice of ex			4, as the reasons for
3	parte Communication			sealing (institutional
				security) remain
4				compelling despite
5	Dkt. 239, Admin. Mtn	Lathran's First Deal	Pending	facility closure. Defendants do not
	for <i>in camera</i> review and	Lothrop's First Decl., institutional security.	rending	object to unsealing
6	to Seal Documents	Advance public notice		Dkt. 239-3, as the
7	Related to Transfer of	of intent to transfer an		transfer is complete
<i>'</i>	AIC	AIC is not sound		and FCI Dublin is
8		correctional practice and		closed, mooting the
		can jeopardize the safety		reasons for sealing.
9		of the AIC as well as		The remaining
10		institution staff, both of		attachment contain
		which are independent		PII and must remain
11		compelling interests.		sealed pursuant to
12	Dkt. 242, Admin. Mtn	Lothrop's First Decl.,	Pending	the Privacy Act. Defendants do not
12	for <i>in camera</i> review and	institutional security.	renanig	object to unsealing
13	to Seal Documents	Advance public notice		Dkt. 242-3 as the
14	Related to Transfer of	of intent to transfer an		transfer is complete
14	AIC	AIC is not sound		and FCI Dublin is
15		correctional practice and		closed, mooting the
		can jeopardize the safety		reasons for sealing.
16		of the AIC as well as		The remaining
17		institution staff, both of		attachments contain
		which are independent		PII and must remain
18		compelling interests.		sealed pursuant to
19	Dkt. 244, Admin. Mtn	Lothrop's First Decl.,	Pending	the Privacy Act. Defendants do not
19	for <i>in camera</i> review and	institutional security.	Tenung	object to unsealing
20	to Seal Documents	Advance public notice		Dkt. 244-3 as the
21	Related to Transfer of	of intent to transfer an		transfer is complete
21	AIC	AIC is not sound		and FCI Dublin is
22		correctional practice and		closed, mooting the
		can jeopardize the safety		reasons for sealing.
23		of the AIC as well as		The attachments
24		institution staff, both of		contain PII and
~~		which are independent		should remain sealed
25		compelling interests.		pursuant to the Privacy Act.
26				I II vacy Act.
26				

1	Dkt. 247, Unopposed	Doc. 161-3 at ¶¶ 6, 8,	Pending	Defendants object to
2	Mtn. to Seal Portions of	16, institutional security.		unsealing 246-1 and
	Mold and Asbestos Reports			2, the portions of the reports containing
3	Reports			maps of the facility,
4				as the reasons for
5				sealing (institutional security) remain
				compelling despite
6				facility closure.
7	Dkt. 251, Mtn. to Seal	Lothrop's First Decl.,	Granted in Dkt. 300	Defendants do not
8	Notice of Intent to Transfer AICs Due to	institutional security.		object to unsealing Dkt. 251-3 as the
8	Facility Closure			transfer is complete
9				and FCI Dublin is
10				closed, mooting the
11				reasons for sealing. As such, Defendants
11				will redact PII and
12				file a public version
13	Dist 250 Admin Mar to	Lathuan's Einst Daal	Crantad in Dist 200	of Dkt. 251-3.
	Dkt. 258, Admin. Mtn to Seal Excerpts from U.S.	Lothrop's First Decl., institutional security.	Granted in Dkt. 300	Defendants object to unsealing documents
14	Mtn for Relief from Dkt.	institutional security.		related to Dkt. 258,
15	254-1			as the reasons for
16				sealing (institutional
				security) remain compelling despite
17				facility closure.
18	Dkt. 292, Notice of	The Court directed BOP	Pending	To the extent the
19	Manual Filing Documents Under Seal	to provide this filing in sealed Order at Dkt.		Court's Order directing this filing
19	in Response to Dkt. 275-	275-1. Some of the		remains sealed,
20	1	contents are privileged		Defendants object to
21		and confidential law		unsealing Dkt. 292-
		enforcement sensitive policies.		A–P. If Dkt. 275-1 is unsealed, Defendants
22		poneies.		do not object to
23				redacting PII and law
24				enforcement
				sensitive materials and filing public
25				versions.
26				

1	Dated this 25th day of June, 2024.	
2		JESSE A. LASLOVICH
3		United States Attorney
4		/s/ Madison L. Mattioli MADISON L. MATTIOLI
5		ABBIE J.N. CZIOK
6		MARK STEGER SMITH TIMOTHY A. TATARKA
7		Assistant U.S. Attorneys Attorneys for Federal Defendants
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